

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. 3:12-CR-00235-MOC-DCK**

UNITED STATES OF AMERICA,)
)
- v -)
)
PHILLIP D. MURPHY,)
)
Defendant.)
_____)

DEFENDANT'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS

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Description of the Case

This is a criminal case arising from transactions involving the investment of money obtained by municipalities and similar entities from the sale of bonds. The government alleges that the defendant who worked at Bank of America engaged in criminal conduct in connection with those transactions. He has pleaded not guilty and is presumed innocent unless and until the government proves beyond a reasonable doubt that he is guilty of the charges in the indictment.

PROPOSED ORAL VOIR DIRE

Individual Voir Dire

1. What is your name?
2. What town or neighborhood do you live in?
3. With whom do you live? What do they do for a living?
4. Do you own your home or do you rent?
5. What is the highest level of schooling you have completed?
6. What is your current employment? Generally, what do you do at work? How long have you held your current position? If retired, what did you do before?
7. Do you have a spouse or partner? If so, how is he or she employed?
8. Do you have any children? How old are they? If they are adults, how are they employed?
9. What types of magazines, newspapers, and books do you read on a regular basis?
10. Do you belong to any civic, social, religious, political, or professional organizations?
11. Have you ever served in the military? If so, what was your rank at the time of discharge?
12. What do you do in your spare time?
13. Do you invest or have you invested in stocks, bonds or other financial instruments?
14. Do any of you have any personal knowledge of the charges in the Indictment in this case?

- (a) Have any of you read or heard anything about this case? If yes, please approach the bench to tell us what you have learned or heard.
15. The charges in this case are that the defendant committed fraud by conspiring with others to rig bids, creating false documents which defrauded the IRS, and creating false entries in the books and records of Bank of America. As I said before, the defendant has pleaded not guilty and it is your obligation under the Constitution to consider him innocent as he sits here today. Is there anything about the charges against the defendant such as the fact that they involve a bank or the IRS which would make it difficult for any of you to render a fair verdict?
16. Have any of you, or any of your close friends or family members, ever worked for a bank or in the financial services industry in general? Who was it and which bank did he or she work for?
17. Do you have any attitudes or beliefs toward the financial services industry or people who work in that industry that would affect your ability to be fair in this case?
18. Have you ever had any experience related to:
- (a) Soliciting or submitting bids or proposals? If yes, can you tell us about that.
19. As I have said, the Defendant in this case is PHILLIP DENNIS MURPHY. [Please ask the Defendant to stand.] Do any of you know, or have you had any dealings, directly or indirectly, with the Defendant, or with any relative, friend, or associate of the Defendant?
- (a) Several members of his family are in the courtroom today. [Please ask them to stand.] Do any of you know them?
20. Mr. Murphy is represented in this case by Susan Necheles, Frederick Hafetz and Kathleen Cassidy of the law firm of Hafetz Necheles & Rocco, LLP and Edward Hinson and Kris Finlon of the law firm of James, McElroy & Diehl, P.A. [Please ask the attorneys to stand.] Do any of you know any of them or have you had any dealings, either directly or indirectly, with them or anyone associated with their law firms?
21. The government is represented here by the United States Department of Justice, the Antitrust Division. The prosecutors who will try this case are Steven Tugander, Richard Powers and Eric Hoffmann. [Please ask the prosecutors to stand.] With them at counsel table is [INSERT NAME], a Special Agent with the Federal Bureau of Investigation. [Please ask Special Agent to stand.] There will also be evidence at trial that a number of other prosecutors, including Rebecca Meiklejohn, Paul Binder, and Brian Stack were involved in investigating this case. Do any of you know any of the attorneys or agents for the Government? Have you had any dealings, either directly or indirectly, with any of them?

22. Do any of you know or have any of you had any personal or business dealings, either directly or indirectly with any of the following individuals and entities who may be called as witnesses or whose names may come up during the trial?

[The Parties will provide the Court with a list of prospective witnesses and names that may be mentioned during the trial.]

23. Do any of you know, or have any association—professional, business, or social— with any member of the staff of the United States Attorney's Office for the Western District of North Carolina, the Antitrust Division of the Department of Justice or any section of the Department of Justice, the Securities and Exchange Commission, the Internal Revenue Service, or the Federal Bureau of Investigation?

(a) Is any member of your family or close friend employed by any other federal department or agency, the military, any law enforcement agency, prosecutor's office, or any securities regulatory agency, whether federal, state or local?

24. Have you or any member of your family or any close friend ever applied for a position with any law enforcement agency or the IRS?

25. Do you have any bias, prejudice or other feelings either for or against the United States Attorney's Office, the Department of Justice, the Securities and Exchange Commission, the IRS, the FBI, or any other law enforcement or securities regulatory agency?

26. Have you, or any family member, either as an individual or in the course of business, ever been a party to any legal action or dispute with the United States, any officer, department, agency, or employee of the United States, the IRS, or the FBI, or had any interest in any such legal action or dispute?

27. Do you have any specialized knowledge about law, the criminal justice system, law enforcement, or private or criminal investigations?

28. Do you have any bias, prejudice, or other feelings for or against criminal defense attorneys or law firms that specialize in criminal defense?

29. Have you ever, at any time, served as a member of a grand jury, whether federal, state, or county court?

(a) If so, when and in what court did you serve?

30. Have you ever served as a juror in a trial in any court?

(a) If so, when and in what court did you serve and was it a civil or criminal case?

(b) Did the jury reach a verdict?

31. Would any of these experiences interfere with your ability to be a fair and impartial juror in this case?
32. Have you, or any family member or close friend, ever been involved in or appeared as a witness in any investigation by the government, either federal, state or local, or been questioned in any matter by a federal, state, or local law enforcement agency?
33. Have you, any member of your family, business associate or close friend, ever been arrested or charged with a crime?
34. Have you, or any family member or close friend, ever been a victim of a fraud or a crime? What happened and would it interfere with your ability to be fair in this case?
35. Do any of you have any difficulty reading or understanding English to any degree?
36. There is information about this case or related cases which has been posted on the internet or in newspaper articles. That information is not reliable. Much of what is posted or written contains factual misstatements or repeats the allegations of one party without any response from the other party. Our jury system depends on jurors learning the facts about a case only from the evidence presented in court, where the opposing party has the chance to cross examine and challenge or explain evidence. It would be a violation of your oath as a juror and the fundamental principles which underlie our system if you did any research about this case outside of court, including reading anything on the internet or in any newspaper. Equally, it would be a violation of your oath if you were to post anything about this case on the internet during the time that you were serving as a juror. Can you give me your oath as a juror that you will be able to refrain from doing any research on anything having to do with this case, including Googling any of the parties or attorneys or witnesses, for the duration of this case?
37. Have you formed any opinion about this case, or are you leaning in favor of one side, based on what you have heard in this courtroom today, before hearing any of the evidence?
38. Do you have any ethical, cultural, religious, political, or other beliefs that may prevent you from serving fairly as a juror in this case - that you haven't already told us about?
39. I expect this trial to take approximately 6-8 weeks. Do any of you have any physical or personal problems or commitments that would prevent you from serving in this case for the time period that I have indicated?
40. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly, and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?

41. Would you want a juror like yourself if you were the defendant?

Respectfully submitted,

This thirteenth day of January, 2014.

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/s/ Kathleen E. Cassidy

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CERTIFICATE OF SERVICE

The undersigned certifies that the **DEFENDANT'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS** has this date been electronically filed with the Clerk of Court using the CM/ECF system, which will transmit notification of such filing, constituting service thereof, to the following:

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Respectfully submitted,

This thirteenth day of January, 2014.

/s/ Kathleen E. Cassidy
Kathleen E. Cassidy